

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JMJ ENTERPRISES, INC. : CIVIL ACTION
:
v. :
:
VIA VENETO ITALIAN ICE, INC. : NO. 97-CV-0652

MEMORANDUM AND ORDER

J. M. KELLY, J.

MAY 18, 1998

Defendant Via Veneto Italian Ice, Inc.'s ("Via Veneto") Motion for Reconsideration of Denial of Summary Judgment or In the Alternative Motion in Limine is before the Court.

During discovery, Plaintiff JMJ Enterprises, Inc. ("JMJ") responded to Defendant Via Veneto's interrogatory on damages by referring to its expert report on damages. That report was ruled inadmissible by this Court's April 15, 1998 Memorandum and Order. Via Veneto's current motion seeks dismissal of all claims on the ground that there is no admissible evidence of damages in this case.

As stated in this Court's April 15 Memorandum:

Pennsylvania law requires that the evidence supply 'a reasonable basis from which the fact finder can calculate the plaintiff's loss.' . . . Evidence of JMJ's sales may be sufficient to allow a jury to infer lost profits. In addition, there is evidence that JMJ's principals expended time and money in reliance on a contract or promise with Via Veneto. There is prima facie evidence of damages in the record.

JMJ should have answered Via Veneto's interrogatory. Nevertheless, the facts supporting JMJ's damage claims were revealed during discovery. Considering the lack of prejudice, dismissal of the JMJ's claims would be a disproportionate

sanction.

Therefore, this th day of May, 1998, it is ORDERED that:

1. JMJ shall respond to Via Veneto's interrogatory on damages (Defendant's Interrogatories Addressed to Plaintiff (First Set) # 15) within twenty-fours hours of receipt of this order.

2. Via Veneto's Motion for Reconsideration of Denial of Summary Judgment or In the Alternative Motion in Limine is DENIED.

BY THE COURT:

JAMES MCGIRR KELLY, J.